

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERTA JANE BALL,

Plaintiff,

V.

NANCY A. BERRYHILL,¹

Defendant.

CASE NO. C16-1264JLR

**ORDER REVERSING AND
REMANDING FOR FURTHER
ADMINISTRATIVE
PROCEEDINGS**

I. INTRODUCTION

Plaintiff Roberta Jane Ball seeks review of the denial of her application for disability insurance benefits. Ms. Ball contends that the Administrative Law Judge (“ALJ”) erred in evaluating Ms. Ball’s testimony, assessing her residual functional capacity (“RFC”), and finding her capable of performing work available in the national economy. (Op. Br. (Dkt. # 7) at 1.) Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the court REVERSES Defendant Commissioner Nancy A. Berryhill’s (“the Commissioner”) final decision and

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as Defendant in this suit. The court DIRECTS the Clerk to update the docket, and all future filings by the parties should reflect this change.

1 REMANDS the matter for further administrative proceedings under sentence four of 42
2 U.S.C. § 405(g).

3 **II. BACKGROUND**

4 On August 15, 2013, Ms. Ball protectively filed an application for disability
5 insurance benefits. (Administrative Record (“AR”) (Dkt. # 5) at 11.) Ms. Ball’s
6 application was denied initially and on reconsideration. (*Id.*) After the ALJ conducted a
7 hearing on January 8, 2015, the ALJ issued a decision finding Ms. Ball not disabled. (AR
8 at 11-23.)

9 The ALJ utilized the five-step disability evaluation process in his decision,² and
10 the court summarizes the ALJ’s findings as follows:

12 **Step one:** Ms. Ball has not engaged in substantial gainful activity since December
13 26, 2011, the alleged onset date.

15 **Step two:** Ms. Ball has the severe impairments of bipolar disorder and anxiety
16 disorder.

18 **Step three:** Ms. Ball does not have an impairment or combination of impairments
19 that meets or equals the requirements of a listed impairment.³

21 **RFC:** Ms. Ball has the residual functional capacity to perform a full range of
22 work at all exertional levels but subject to following nonexertional limitations.
23 Ms. Ball is able to perform work that is limited to unskilled, repetitive, and routine
work. She is able to perform work with no public contact and only occasional
contact with supervisors and coworkers. She is able to perform work that allows
her to work at her own pace while still meeting minimum production requirements
of the job. She is able to perform work that allows her to be off task up to 10
percent of the time while still meeting minimum production requirements of the
job.

² 20 C.F.R. § 416.920.

³ 20 C.F.R. Part 404, Subpart P, Appendix 1.

Step four: Ms. Ball is unable to perform any past relevant work.

Step five: Because jobs exist in significant numbers in the national economy that Ms. Ball can perform, she is not disabled.

(See AR at 13-23.) The Appeals Council denied Ms. Ball's request for review, making the ALJ's decision the Commissioner's final decision.⁴ (See AR at 1-6.)

III. ANALYSIS

Pursuant to 42 U.S.C. § 405(g), the court must set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

A. Evaluation of Ms. Ball's Testimony

Ms. Ball argues that the ALJ erred in evaluating her subjective complaints. (See Op. Br. at 2-7.) The court disagrees.

Questions of credibility are solely the responsibility of the ALJ. See *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). The court may not second-guess these credibility determinations. *Allen v. Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent reasons for the disbelief." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996) (internal citation omitted). The ALJ "must identify what testimony is not credible and what evidence

⁴ The court omits the rest of the procedural history in this matter because it is not relevant to the outcome of the case.

1 undermines the claimant's complaints." *Id.*; see also *Dodrill v. Shalala*, 12 F.3d 915, 918
2 (9th Cir. 1993). Unless affirmative evidence shows the claimant is malingering, the
3 ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing."
4 *Lester*, 81 F.2d at 834.

5 Here, the ALJ discounted Ms. Ball's testimony for several reasons, including that
6 "treatment [had] been generally successful" in controlling any alleged symptoms that
7 resulted in limitations above those described in the RFC. (See AR at 20.) An ALJ may
8 discount a claimant's credibility on the basis of medical improvement. See *Morgan v.*
9 *Comm'r, Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tidwell*, 161 F.3d at 601.
10 At the hearing, Ms. Ball testified that she had high anxiety such that she had difficulty
11 leaving the house. (See AR at 35.) She asserted that she could not focus on tasks and
12 had memory problems. (See *id.*) She also testified that she struggled to be around other
13 people and was frequently teary. (See AR at 37, 58-59.) However, as noted by the ALJ,
14 Ms. Ball began to experience improvement with treatment in 2012. (See AR at 18, 256.)
15 In 2013, Ms. Ball reported an improved mood and stated that she had been "very active"
16 when visiting Florida for 10 days. (See AR at 268.) In 2014, Ms. Ball reported improved
17 mood, increased motivation, active exercising, and enjoying activities with no suicidal
18 ideation. (See AR at 288.) Therefore, the ALJ provided a clear and convincing reason
19 supported by substantial evidence to discount Ms. Ball's testimony regarding the
20 intensity and limiting effects of her symptoms.
21
22 //
23

1 **B. The RFC Assessment and Step-Five Finding**

2 Ms. Ball next argues that the RFC and step-five finding are not supported by
3 substantial evidence because the ALJ failed to fully incorporate all of the limitations in
4 the medical opinion evidence. (*See Op. Br.* at 7-8.) The court agrees.

5 If a disability determination “cannot be made on the basis of medical factors alone
6 at step three of the evaluation process,” the ALJ must identify the claimant’s “functional
7 limitations and restrictions” and assess her “remaining capacities for work-related
8 activities.” Social Security Ruling (“SSR”) 96-8p, 1996 WL 374184, at *2. A claimant’s
9 RFC is used at step five to determine whether she can do work available in the national
10 economy. *See id.* A claimant’s RFC is the maximum amount of work she can perform
11 based on all of the relevant evidence in the record. *See id.*

13 First, Ms. Ball argues that the ALJ did not fully incorporate the opinion of David
14 M. Dixon, Ph.D., into the RFC. (*See Op. Br.* at 7-8.) Dr. Dixon opined that Ms. Ball’s
15 sustained concentration was poor and that her persistence was fair. (*See AR* at 282.) The
16 ALJ gave Dr. Dixon’s opinion great weight and assessed Ms. Ball with an RFC limiting
17 her to unskilled, repetitive, routine work that allows her to work at her own pace and be
18 off task for 10 percent of the workday. (*See AR* at 16, 21.) The broad categories of
19 concentration, persistence, and pace do not necessarily directly correlate to the function-
20 by-function analysis of an RFC. *See SSR* 96-8p, 1996 WL 374184, at *4. Accordingly,
21 an ALJ’s RFC assessment “adequately captures restrictions related to concentration,
22 persistence, or pace” where the assessment is consistent with specific restrictions
23

1 identified in the medical testimony. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169,
2 1174 (9th Cir. 2008). Here, in the absence of specific functional restrictions in Dr.
3 Dixon's opinion addressing concentration and persistence, the ALJ inferred that the RFC
4 reasonably accounted for the medical testimony. (See AR at 16, 21, 282.) The ALJ's
5 inference was reasonable and is not in error. *See Batson v. Comm'r, Soc. Sec. Admin.*,
6 359 F.3d 1190, 1193 (9th Cir. 2004) ("[T]he Commissioner's findings are upheld if
7 supported by inferences reasonably drawn from the record.").

8 Next, Ms. Ball argues that the ALJ did not fully incorporate the opinion of John
9 Wolfe, Ph.D., into the RFC. (See Op. Br. at 8.) Dr. Wolfe opined that Ms. Ball's ability
10 to perform tasks would be occasionally interrupted by psychological symptoms. (See AR
11 at 87.) The ALJ gave Dr. Wolfe's opinion great weight, assessing Ms. Ball with an RFC
12 allowing her to be off task for 10 percent of the workday. (See AR at 16, 21.) However,
13 the Commissioner has defined "occasional" in the context of disability adjudication to
14 mean occurring "up to one third of the time."⁵ See SSR 96-9p, 1996 WL 374185, at *3.
15 The ALJ provides no reason, and the court cannot reasonably infer, why the ALJ
16 accepted Dr. Wolfe's opinion but imposed less strict limitations on Ms. Ball. (See AR at
17 21.) The vocational expert testified at the hearing that an employee whose symptoms
18 interrupted her ability to work for one third of the day would be unlikely to maintain
19 employment. (See AR at 63-64.) Therefore, the ALJ erred by tacitly rejecting part of Dr.
20

21
22 _____
23 ⁵ The ALJ acknowledged that Dr. Wolfe is an expert in the field of psychological
disability adjudication. (See AR at 21.) Therefore, the court infers that the ALJ expected Dr.
Wolfe's terminology to match the Commissioner's definitions.

1 Wolfe's opinion. *See Reddick v. Chater*, 157 F.3d 715, 724 (9th Cir. 1988).

2 The Ninth Circuit has "recognized that harmless error principles apply in the
3 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
4 (citing *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)). "[I]n
5 each case we look at the record as a whole to determine [if] the error alters the outcome
6 of the case." *Id.* Therefore, "an ALJ's error is harmless where it is 'inconsequential to
7 the ultimate nondisability determination.'" *Id.* (quoting *Carmickle v. Comm'r, Soc. Sec.*
8 *Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)). Here, because the ALJ found Ms. Ball
9 capable of performing work based on an RFC that did not fully incorporate Dr. Wolfe's
10 opinion, the error affected the ultimate disability determination and is not harmless.
11

12 **C. Remand for Further Proceedings**

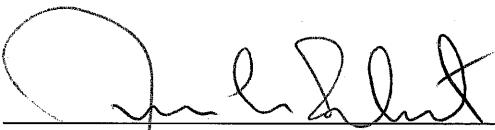
13 Generally, when the court reverses an ALJ's decision, "the proper course, except
14 in rare circumstances, is to remand to the agency for additional investigation or
15 explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted).
16 Here, Ms. Ball requests that the court remand the matter to the Commissioner. (*See Op.*
17 *Br. at 1.*) Accordingly, the court remands the case for further administrative proceedings.
18

19 **IV. CONCLUSION**

20 For the foregoing reasons, the court REVERSES the Commissioner's final
21 //
22 //
23 //

1 decision and REMANDS this case for further administrative proceedings under sentence
2 four of 42 U.S.C. § 405(g).

3 DATED this 21st day of February, 2017.

4
5 
6 JAMES L. ROBART
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23